

FILED

SEP 30 2011

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

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IN THE MATTER OF THE REQUEST :
FOR AGENCY ACTION OF GENWAL :
RESOURCES, INC., PETITIONER AND :
PERMITTEE; DIVISION OF OIL, GAS :
AND MINING, RESPONDENT – :
REQUEST FOR BOARD REVIEW OF :
DIVISION ORDER DO10A, REQUIRING :
BONDING FOR THE PERPETUAL :
TREATMENT OF MINE WATER :
DISCHARGE AT THE CRANDALL :
CANYON MINE IN EMERY COUNTY, :
UTAH.

MINUTE ENTRY

Docket No. 2010-026
Cause No. C/015/0032 F

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The Board has read and considered the following filings:

1. Division's Brief Regarding Identified Legal Questions, filed November 15, 2010;
2. Pre-Hearing Brief Opposing Perpetual Bonding Requirements of Division Order 10-A, filed November 15, 2010;
3. Statement of Undisputed Facts, filed November 15, 2010;
4. Division's Response to Genwal's Brief Regarding Identified Legal Questions, filed December 1, 2010;
5. Petitioner's Reply Brief Opposing Perpetual Bonding in Division Order 10-A, Crandall Canyon Mine, filed December 1, 2010;
6. Petitioner's Motion for Extension of Time To Conduct Settlement Negotiations Re Division Order 10-A, Crandall Canyon Mine, filed May 23, 2011;
7. Petitioner's Motion to Continue Evidentiary Hearing, filed June 8, 2011;

8. Division's Response to Genwal's Motion to Continue Evidentiary Hearing and Motion to Modify Division Order 10A, filed June 9, 2011;
9. Genwal's Response to the Division's Motion to Modify Division Order 10A and Reply Memo in Support of Motion to Continue, filed June 13, 2011;
10. Genwal's Motion to Strike, filed June 13, 2011;
11. Division's Reply to Genwal's Motion to Strike and Reply to Motion for Decision on Legal Issues, filed June 13, 2011.
12. Stipulation Granting Leave to Amend and Scheduling of Further Proceedings, filed June 15, 2011;
13. Amended Division Order and Findings of Permit Deficiency/Inadequate Bonding, filed June 20, 2011;
14. Genwal's Brief Opposing Amended Division Order DO-10A, Crandall Canyon Mine, filed July 11, 2011;
15. Division's Response to Genwal's Brief Opposing Amended Division Order 10A, filed July 20, 2011; and
16. Genwal's Supplemental Memorandum Regarding Amended Division Order DO-10A, Crandall Canyon Mine, filed July 26, 2011.

Having considered the above-referenced filings, and good cause appearing, the Board HEREBY ORDERS as follows:

With respect to the alternative bonding system options set forth in the Division Order under appeal (such as trust funds), the Board agrees with Petitioner Genwal that such options cannot be employed absent rulemaking providing for and setting forth standards for such alternative bonding systems. The Board also agrees that use of conventional bonds sufficient to

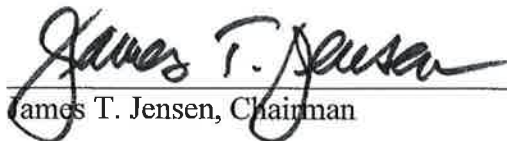
provide annual payments to cover mine-water treatments costs in this case in perpetuity cannot occur without rulemaking providing standards for the use of conventional bonds in this way. The Board therefore rules that the Division exceeded its authority to the extent the Division Order under appeal includes these bonding elements.

The Board directs the Division to develop draft proposed rules aimed at providing additional bonding options for situations involving long-term pollution discharges from coal mines. In developing proposed rules, the Division should consider, among other things, alternative bonding systems of the kind addressed in the rulemaking efforts in Tennessee and other states discussed in the parties' briefs, as well as how conventional bonds designed to provide payments for treatment costs in perpetuity are to be calculated, adjusted and released. The Division should utilize the informal rulemaking procedures it has used in the past to solicit input on the proposed rules prior to requesting that the Board initiate formal rulemaking. The Division should also analyze whether any statutory changes may be necessary to permit the proposed rulemaking to occur.

Whether bonding for the water discharge at issue in this matter can be appropriately addressed through the use of conventional bonding mechanisms, including some form of incremental bonding similar to that addressed in Amended Division Order 10A, depends in part on the probable duration of the discharge. The Board will therefore take evidence on this question. Given the parties' dispute over the amount of annual water treatment costs, the Board will also take evidence on that issue. The Board will take evidence on both of these issues at its regularly-scheduled October 26, 2011 hearing unless a different date is announced in the coming weeks.

DATED this 30th day of September, 2011.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING
James T. Jensen, Chairman


James T. Jensen, Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing MINUTE ENTRY for Docket No. 2010-026, Cause No. C/015/0032F to be mailed with postage prepaid, this 3rd day of ~~September~~, 2011, to the following:

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